

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JOHN R. BUND II, personally, as Executor of  
the Estate of Richard C. Bund, deceased;  
MANDY HANOUSEK and GARETT  
HANOUSEK, a married couple, and on behalf  
of others similarly situated,

Plaintiff,

vs.

SAFEGUARD PROPERTIES, LLC, a  
Delaware corporation,

Defendant.

No. 2:16-cv-920 MJP

STIPULATED MOTION FOR LIMITED  
MODIFICATION OF THE  
SCHEDULING ORDER

**NOTED FOR HEARING:  
NOVEMBER 1, 2017**

STIPULATED MOTION FOR LIMITED  
MODIFICATION OF THE SCHEDULING ORDER  
2:16-cv-920 MJP

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## I. STIPULATION

The discovery motions cutoff was October 11, 2017. Dkt. # 142. The discovery cutoff is November 13, 2017. *Id.* The parties seek to modify those dates for the limited purpose of the following enumerated activities.

The parties agree that some of the issues in Plaintiffs' motion to compel (Dkt. # 146) and Defendant's motion for protective order (Dkt. # 150) may be mooted by the Court's order on Plaintiffs' pending motion for class certification (Dkt. # 86). Therefore, in order to alleviate some of the immediate burden on the Court's time, the parties agree that, (a) with the Court's leave, the motions should be renoted for the third Friday following the Court's issuance of the order on Dkt. # 86; and (b) the parties will review their respective motions and determine which, if any, issues remain to be decided following the Court's order on Dkt. # 86.

Both parties have identified experts to address the issue of Plaintiffs' disputed rent damages claim. Defendant has challenged that claim on the basis of, among other things, Plaintiffs' failure to timely identify rents as a category of damages, and failure to provide any computation of damages, under Federal Rule of Civil Procedure 26(a). The parties want to avoid the expenses of deposing the two experts before knowing whether the Court will allow Plaintiffs to pursue a rent damages claim. Further, Plaintiffs' expert is not available for a deposition before the discovery cutoff, and Plaintiffs communicated this to Defendant on October 30, 2017. Therefore, the parties stipulate that, with the Court's leave, they will postpone the depositions of John Kilpatrick (Plaintiffs' expert) and Bates McKee (Defendant's expert) until after the Court rules on whether Plaintiffs may pursue a claim for rents.

## II. AUTHORITY

A moving party may renote a pending motion, once a response has been filed, by filing a stipulation signed by all parties or by order of the court. LCR 7(l). Although the parties are bound by the dates in a scheduling order, the schedule may be modified for good cause and with

1 the judge's consent. LCR 16(b)(4). The parties seeking a change in dates and schedules  
2 previously set by the court shall clearly state the reasons justifying the proposed change.  
3 LCR 10(g).

4 The parties believe the Court has good cause to permit them to renote two discovery  
5 motions, Dkt. # 146 and Dkt. # 150, after the discovery motions cutoff because (a) the motions  
6 were timely filed before the discovery motions cutoff; (b) the Court's decision on the motion for  
7 class certification (Dkt. # 86) may moot issues in the pending motions. The parties ask that the  
8 Court consent to their renoting the motions three Fridays after the Court's order on Plaintiffs'  
9 motion for class certification.

10 The parties believe the Court has good cause to permit them to take expert depositions  
11 after the discovery cutoff. The two experts were retained to address Plaintiffs' rents damages  
12 theory, but the Court still needs to rule on whether Plaintiffs will be permitted to pursue that  
13 damages theory given the arguments to the contrary. Thus, taking and defending the depositions  
14 at this time could mean the parties incur unnecessary costs. The parties ask that the Court permit  
15 these depositions to go forward after the discovery cutoff in the event that the Court rules that  
16 Plaintiffs may pursue the rents damages theory.

17 Respectfully submitted this 1st day of November, 2017.

18  
19 JEFFERS, DANIELSON, SONN &  
AYLWARD, P.S.

20  
21 By: /s/ Clay M. Gatens  
22 Clay M. Gatens, WSBA No. 34102  
23 Sally F. White, WSBA No. 49457  
24 Devon A. Gray, WSBA No. 51485  
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4 Attorneys for Plaintiffs

5 Respectfully submitted this 1st day of November, 2017.

6 DAUDT LAW PLLC

7  
8 By: /s/ Michael D. Daudt  
9 Mr. Michael D. Daudt, WSBA # 25690  
10 Associated Counsel for Plaintiff  
11 Daudt Law PLLC  
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16 Respectfully submitted this 1st day of November, 2017.

17 LEE SMART, P.S., INC.

18 By: /s/ Pamela J. DeVet  
19 Pamela J. DeVet, WSBA No. 32882  
20 Kellan W. Byrne, WSBA No. 49825  
21 Of Attorneys for Defendant  
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Dated this 3rd day of November, 2017.

  
Marsha J. Pechman  
United States District Judge

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date provided at the signature below, I electronically filed the  
3 preceding document with the Clerk of the Court using the CM/ECF system, which will send  
4 notification of such filing to the following individuals:

5 Mr. Clay Gatens  
6 Mr. H. Lee Lewis  
7 Ms. Devon A. Gray  
8 Jeffers, Danielson, Sonn & Aylward, P.S.  
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14 Mr. Michael D. Daudt  
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19 I certify under penalty of perjury under the laws of the United States of America that the  
20 foregoing is true and correct, to the best of my knowledge.

21 DATED this 1<sup>st</sup> day of November, 2017 at Seattle, Washington.

22 LEE SMART, P.S., INC.

23 By: /s/ Pamela J. DeVet  
24 Pamela J. DeVet, WSBA No. 32882  
25 Of Attorneys for Defendant  
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